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10/678,593	10/02/2003	Gintaras A. Vaisnys	DEFIB-65674	6159

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EXAMINER	
ALTER, ALYSSA M	

ART UNIT	PAPER NUMBER
3762	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	**Application No.** 10/678,593	**Applicant(s)** VAISNYS ET AL.
	Examiner Alyssa M. Alter	**Art Unit** 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 4-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 3, 2006 has been entered.

Response to Arguments

Applicant's arguments filed November 3, 2006 have been fully considered but they are not persuasive. The new ground(s) of rejection, necessitated by amendment, appear below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-2, 4-41, 43, 45 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson et al. (US 5,792,190). Olson et al. discloses an automated external

defibrillator (AED) having a case, processor, visual indicator, speaker and an electrode compartment.

The visual indicator or maintenance indicator 20, presents a yellow color during a maintenance required state, as discloses in col. 5, lines 44-46, and a black color when the system is in a operational state. "During the daily self-test processor 74 perform all the component check operations described above that are performed during the lid opened and lid closed self-tests. In addition to illuminating the appropriate lights on diagnostic display panel 36, processor 74 switches maintenance indicator 20 to its maintenance required state and activates alarm 96 if faults are identified during the daily self-test"(col. 8, lines 8-14).

Furthermore, since this closed-lid daily self-test (i.e. every 24 hours) is preformed, the examiner considers the illumination of the maintenance indicator to be intermittently presented. During the evaluation the maintenance indicator would be switched to the appropriate color, either re-illuminated black or switch to yellow to indicate maintenance required. Therefore, the color is intermitted presented.

Also, a "failure of said visual indicator to intermittently present the first color indication when the defibrillator is off", would necessarily indicate an error condition. For example, if the indicator did not illuminate, there would be a problem with the indicator and thus an "error condition". In the alternative, when maintenance is required, the indicator is illuminated yellow and thus fails to intermitted present a first color.

As to claim 6, "Electrical power is provided by a rechargeable twelve volt lead-acid cartridge battery 80 and a nine volt battery 82 which are removably positioned within the battery compartment and connected to power generation circuit 84"(col. 3, lines 62-66).

As to claims 8-9, "The invention is configured for use with a pair of packaged electrodes electrically connected to one another within the package, and further includes a place electrodes indicator, a check electrodes indicator and an impedance measuring circuit. The place electrodes indicator includes an audible voice prompt. The check electrodes indicator includes both an audible voice prompt and a visual display. The impedance measuring circuit is coupled between the electrode terminals and the digital control system, and measures the impedance between the electrode terminals. The digital control system of this embodiment includes place electrodes indicator actuating means, electrode connection checking means and electrode application checking means. The place electrodes indicator actuating means actuates the place electrodes indicator after the lid is opened and before analyzing signals present on the electrode terminals. The electrode connection checking means identifies improper electrode connections to the electrode terminals as a function of the measured impedance between the electrode terminals, and actuates the check electrode indicator when improper electrode connections are identified. The electrode application checking means identifies improper electrode placement on a patient as a function of the measured impedance between the electrode terminals, and actuates the check electrodes indicator when improper electrode placement is identified"(col. 1-2, lines 66-67 and 1-24, respectively).

Furthermore, "if the monitored impedance is out of range (e.g., too high if the electrodes have come off the patient, or too low if shorted), processor 74 initiates the generation of a "Check Electrodes." voice prompt, and causes high voltage generation circuit 86 to discharge any charge that may be present through internal load 98" (col. 7, lines 37-42). Also, if the "electrodes 50 is missing or unplugged from connector 32, or if the electrodes are damaged (e.g., dried out), processor 74 will illuminate the indicator light 40 on diagnostic display panel 36"(col. 5, lines 64-67).

Once the electrodes have been determine to be in functioning and positioned properly, the electrocardiogram commences. A visual indicator is activated during the cardiac rhythm analysis or EKG. "If the processor 74 determines that the patient has a nonshockable cardiac rhythm that is not susceptible to treatment by defibrillation pulses (e.g., no pulse rather than a fibrillating rhythm), it initiates the generation of a "Check pulse. If no pulse, give CPR." voice prompt. One minute after this voice prompt, processor 74 repeats the initiation of the "Do not touch patient. Analyzing rhythm." voice prompt and the associated cardiac rhythm analysis. When a shockable cardiac rhythm is detected, processor 74 begins a first charge sequence by initiating the generation of a "Charging." voice prompt, and causes high voltage generation circuit 86 to operate in the charge mode. When the high voltage generation circuit 86 is charged, processor 74 begins a first shock sequence by initiating the generation of a "Stand clear. Push flashing button to rescue." voice prompt, and the flashing illumination of rescue switch light 19"(col. 6, lines 47-64). The examiner considers a detection of a nonshockable cardiac rhythm to be detection of weak ECG signal amplitude.

As to claims 10, 16, 22 and 30, Olson et al. discloses flashing indicators, the examiner further notes that the functional language and introductory statement of intended use of claims 10, 16, 22 and 30 have been carefully considered but are not considered to impart any further structural limitations over the prior art. Since Olson et al. utilizes LED as claimed by the Applicant, Olson et al. is therefore capable of using the LEDs as blinking LEDs. In addition nothing prevents Olson et al. from causing the LEDs to blink. Therefore, the LEDs are capable of being used as blinking LEDs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 10, 16, 22, 30, 42, 44, 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson et al. (US 5,792,190). Olson et al. discloses the claimed invention except for the blinking LEDs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the LEDs as taught by Olson et al. with blinking LEDs since it was known in the art to employ blinking LEDs in order to draw attention to a medical device's operational state. For example, blinking LEDs can be employed when a machine is in the process of dispensing therapy or recharging.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GEORGE R. EVANISKO
PRIMARY EXAMINER
7/7/1

Alyssa Alter
Alyssa M Alter
Examiner
Art Unit 3762